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In re Application of
NAKAGAWA et al.
Application No. 09/607,324
Filed: June 30, 2000
Attorney Docket No. 2927-0113P

DECISION ON PETITION

This is a decision on the petition filed September 3, 2003, requesting that the holding of abandonment in the above-identified application be withdrawn.

The petition to withdraw the holding of abandonment is GRANTED.

This application became abandoned for failure to timely respond to the final Office action mailed on January 29, 2003.

Petitioner asserts that a Reply After Final, a Petition for a Three-Month Extension of Time, a Notice of Appeal and the corresponding fees were timely filed on July 29, 2003 as evidenced by copies of the Reply After Final, the Petition for a Three-Month Extension of Time, the Notice of Appeal and the postcard receipt indicating receipt of all papers in the Patent and Trademark Office on July 29, 2003.

The review of the application file reveals that the Reply After Final, the Petition for a Three-Month Extension of Time and the Notice of Appeal were received but not matched with the file at the time the examiner held the application abandoned. A review of the PALM database reveals that the Three-Month Extension of Time and the Notice of Appeal fees were paid on July 30, 2003.

Consideration of proposed after final amendments are addressed in 37 CFR § 1.113, 37 CFR §1.116, and MPEP 714.13 reproduced, in part, below:

37 CFR § 1.113 (c) states, in part, the following:

“(c) reply to a final rejection or action must include cancellation of or appeal from the rejection of, each rejected claim. If any claim stands allowed, the reply to a final rejection or action must comply with any requirements or objections as to form.”

37 CFR § 1.116 (b) and (c) state, in part, the following:

“(b) ... amendments may be made canceling claims or complying with any requirement of form expressly set forth in a previous Office action. Amendments presenting rejected claims in better form for consideration on appeal may be admitted. The admission of, or refusal to admit, and amendment after a final rejection, a final action, an action closing prosecution, or any related proceedings will not operate to relieve the application or patent under reexamination from its condition as subject to appeal or to save the application from abandonment...”

“(c) If amendments touching the merits of the application or patent under reexamination are presented after final rejection, or after appeal has been taken, or when such amendment might not otherwise be proper, they may be admitted upon a showing of good and sufficient reasons why they are necessary and were not earlier presented.”

Section 714.13 of the MPEP states, in part, the following:

“An amendment filed at any time after final rejection but before an appeal brief is filed, may be entered upon or after filing of an appeal brief provided the total effect of the amendment is to (A) remove issues for appeal, and/or (B) adopt examiner suggestions.”

* * *

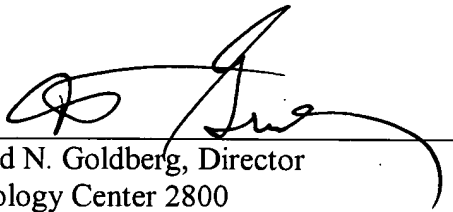
“It should be noted that under 37 CFR 1.181(f), the filing of a 37 CFR 1.181 petition will not stay the period for reply to an examiner’s action which may be running against an application. See MPEP § 1207 for appeal and post-appeal procedure.”

Under current practice, the proposed Reply After Final amendment would be entered if it *prima facie* placed the application in condition for allowance. The examiner, after consideration, has determined that the proposed Reply After Final amendment would *prima facie* place the application in condition for allowance.

For the above reasons, the holding of abandonment for the above-identified application is withdrawn.

The application file is being forwarded to the technical support staff for processing the Reply After Final and the Notice of Appeal. From there, it will be returned to the examiner for further prosecution.

Inquiries regarding this decision should be directed to Jose' G. Dees at (571) 272-1569.

A handwritten signature in black ink, appearing to read 'H. Goldberg', is written over a horizontal line.

Howard N. Goldberg, Director
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